

**DEPARTMENT OF ENVIRONMENTAL QUALITY
TESTIMONY IN THE MATTER OF AMENDMENT OF AIR QUALITY RULES
PERTAINING TO THE AMENDMENT OF ARM 17.8.302, INCORPORATION BY REFERENCE OF
HAZARDOUS AIR POLLUTANTS EMISSION STANDARDS
September 17, 2002**

For the record, my name is Jan Brown. I am a Rule Development Specialist in the Montana Department of Environmental Quality's Air and Waste Management Bureau. We are located in the Metcalf Building in Helena, Montana. I am here to present testimony for the Department.

The Department is requesting that the Board consider revisions to our MACT rules that are incorporated by reference. These are federal requirements for maximum achievable control technology for sources of hazardous air pollutants. This action is to adopt a federal rule verbatim by adopting the federal register notice.

This notice is 67 FR, page 16581, from April 5, 2002, and it amends 40 CFR Part 63 in accordance with Sections 112(g) and 112(j) of the Federal Clean Air Act (FCAA).

These proposed amendments would adopt and incorporate by reference revisions to the NESHAP General Provisions in 40 CFR Part 63, Subpart A. (NESHAP refers to "national emission standards for hazardous air pollutants.") The General Provisions establish the framework for emission standards and other requirements developed pursuant to Section 112 of the FCAA. Section 112 requires the U.S. Environmental Protection Agency (EPA) to promulgate regulations establishing emission standards for categories of sources of HAPs.

The General Provisions eliminate the need to repeat general information and requirements in individual NESHAPs, by consolidating all generally applicable information in one location. The amendments make the General Provisions more flexible. They reduce the regulatory burden on industry, while improving compliance and compatibility with other regulations governing sources of air toxics.

EPA is identifying eight criteria in the General Provisions to consider when defining "new affected source" differently from "existing affected source." This distinction is important if MACT control technology is different for new and existing facilities.

In the revisions, EPA has extended the period of time available for an owner or operator of a facility to request a 1-year compliance extension for the installation of pollution controls. This extension changes the time period for requesting a one-year extension from the current deadline of 1 year before the compliance date to 120 days before the compliance date, and in certain circumstances up to the compliance date.

The federal changes to the General Provisions also clarify several issues related to the startup, shutdown, and malfunction provisions.

The proposed amendment also would adopt and incorporate by reference revisions to the provisions of 40 CFR Part 63 that implement Section 112(j) of the FCAA. Section 112(j) is entitled "*Equivalent Emission Limitation by Permit.*" The federal revisions will generally have the effect of streamlining and reducing burdens, and clarifying current regulations.

Under Section 112, EPA was required to promulgate MACT standards for all source categories within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. Under 112(j), if EPA missed the deadline by 18 months, or May 15, 2002, owners or operators of major sources in source categories for which EPA has not promulgated a standard are required to submit applications to the permitting authority, in this case DEQ, to revise their facility's operating permit to contain emission limits equivalent to the limits that would apply if EPA had promulgated the standard. That meant that the department would be developing these MACT standards, and this was referred to as the MACT "hammer."

The new federal amendments provide that MACT standards for new sources will apply when a facility's operating permit is issued, rather than 18 months after the deadline for development of the standards.

The revisions create a two-part permit application process. Part 1, which was due May 15, 2002, required basic information, such as source type and location. It was required for all major sources in categories for which a standard had not yet been developed. Part 2 will require the relevant process, pollutant, and control information to be submitted to the Department in order to develop the standards for each facility. The Part 2 application information is due to the permitting authority within 24 months after submission of the Part 1 application, or by May 15, 2004.

EPA was confident that they would have all of the standards adopted by that time, so that the second part of the application would not have to be submitted to the states and the states would not have to develop these MACT standards.

However, we received notification in late August that EPA had reached a settlement with the Sierra Club to shorten by one year the deadline for companies to submit their Part 2 applications. The settlement is the result of a lawsuit by the Sierra Club challenging EPA's rule to extend the application deadline to May 15, 2004. Under the settlement, which was signed and filed with the D.C. Circuit Court on August 15, 2002, companies must now submit their part 2 applications by May 15, 2003. EPA must propose a rule by October 15, 2002 with the new 2003 deadline, and issue a final rule by March 15, 2003. EPA still believes that they can have all of the standards adopted by May 15, 2003.

We are proceeding with our current rulemaking, because the Federal Register was published and is in effect now, and sources are required to comply with it. The impact of not adopting this rule would mean that sources would have had to submit the complete application to the Department by May 15 of this year, and that is not what the Department wants. We are therefore recommending that the Board adopt the amendments as proposed.

David Rusoff, DEQ staff attorney, has prepared for the Board a HB 521 review, comparing stringency of state and local rules to any comparable federal regulations, and a HB 311 review, assessing impact on private property.

In regard to the HB 521 review, the proposed amendments would not make the State rules more stringent than comparable federal regulations or guidelines. Therefore, no further HB 521 analysis is required.

In regard to the HB 311 review, the present proposed action involves rules affecting use of private real property for operation of air pollutant sources, and the Board has discretion legally not to take the action. Therefore, the Private Property Assessment Act applies to this proposed rulemaking and completion of an Attorney General's Private Property Assessment Act Checklist is required. This checklist was completed. Based upon completion of the checklist, the proposed rulemaking does not have taking or damaging implications and no further HB 311 assessment is required.

In addition to the MAR notice, the proposed rule changes were publicly noticed in five daily newspapers in Montana and were mailed to the Department's interested parties list and to the Air Pollution Control Advisory Council.

The Department recommends the Board's adoption of the amendments to the air quality rules as proposed in the Montana Administrative Register.